

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

IN RE:)
)
MICHAEL J. MILLS and) Bankruptcy Case No. 99-93027
JANIS F. MILLS,)
)
Debtors.)

OPINION

This matter having come before the Court for confirmation of the Debtor's Chapter 13 Plan of reorganization and upon an Objection to Confirmation filed by Personal Finance Company, on January 4, 2000, and Objection to Debtors Claim of Homestead filed by Creditor, Personal Finance Company, on March 6, 2000; the Court, having heard arguments of counsel, reviewed written memoranda of the parties, and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

The facts surrounding the matters presently before the Court are not in serious dispute and are, in pertinent part, as follows:

1. Debtors filed for relief under Chapter 13 of the Bankruptcy Code on December 20, 1999.
2. In Schedule D of the bankruptcy schedules, the Debtors list two creditors holding mortgages on their residence located at 165 West Mansfield, Bement, Illinois.
3. Creditor, United Companies, holds a first mortgage on the Debtors' residence in the approximate sum of \$25,054.68.

4. Creditor, Personal Finance Company, the Objector herein, holds a second mortgage on the Debtors' residence in the approximate amount of \$7,395.91, as indicated in the Proof of Claim filed by Creditor, Personal Finance Company, on February 24, 2000.

5. The Debtors list the value of their residence at approximately \$38,000, and there has been no dispute as to this valuation.

6. In their Chapter 13 Plan, also filed on December 20, 1999, the Debtors seek to cure an arrearage to the first mortgage holder, United Companies, in the amount of \$1,894.88, through their Chapter 13 Plan while continuing to make regular monthly payments directly to United Companies outside of the Plan.

7. Section B.4. of the Debtors' Chapter 13 Plan seeks, pursuant to 11 U.S.C. §§ 1322(c)(2) and 1325(a)(5), to strip off the second mortgage held by Personal Finance Company on their residence in total and to treat Personal Finance Company as a general unsecured creditor receiving a dividend in the approximate amount of 48% of the claim.

8. As noted above, Personal Finance Company has objected to the treatment proposed on their claim by the Debtors in their Chapter 13 Plan and also objected to the Debtors' claim of the homestead exemption on their residence.

Based upon the uncontroverted facts in this matter, it is clear that the Debtors cannot modify the rights of secured creditor Personal Finance Company as proposed in their Chapter 13 Plan. Given the waiver of the Debtors' homestead exemption as to Creditor, Personal Finance Company, there is ample equity in the Debtors' residence to cover the secured claim of Personal Finance Company. As such, the Debtors' Chapter 13 Plan as presently proposed cannot be confirmed over the Objection to Confirmation of Personal Finance Company. Furthermore, it is clear that the Objection to Debtors Claim of Homestead

by Personal Finance Company must be sustained. The waiver of the Debtors' homestead exemption in Paragraph 20 of the Personal Finance Company Real Estate Mortgage appears to comply with the requirements of 735 ILCS 5/12-904 in all respects. As such, it must be recognized by the Court.

ENTERED: March _____, 2000.

GERALD D. FINES
United States Bankruptcy Judge

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O R D E R

For the reasons set forth in an Opinion entered on the _____ day of March 2000;

IT IS HEREBY ORDERED that:

A. Confirmation of Debtors' Chapter 13 Plan filed on December 20, 1999, is

DENIED;

B. Objection to Confirmation filed by Personal Finance Company on January 4, 2000, is ALLOWED;

C. Objection to Debtors Claim of Homestead filed by Personal Finance Company on March 6, 2000, is ALLOWED; and,

D. Debtors shall have a period of 14 days from the date of this Order to file an amended Chapter 13 plan in conformity with this Order, or to convert their Chapter 13 case to one under Chapter 7 of the Bankruptcy Code.

ENTERED: March _____, 2000.

GERALD D. FINES
United States Bankruptcy Judge

COPY OF OPINION AND ORDER SENT TO:

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